DAMAGES—BREACH OF COVENANT AGAINST INCUMBRANCES—THOUGH INCUMBRANCE REMOVED NOMINAL DAMAGES RECOVERABLE.—More than twenty years after the transfer of a parcel of land by warranty deed, containing a covenant against incumbrances, it was discovered that an uncancelled mortgage existed against the premises and a bill to quiet title was brought to dispose of the mortgage. In an action for damages for breach of covenant it was interposed as a defense that title had been ripened by adverse possession and that as no damage had been suffered by the breach no action ought to be maintained. *Held,* that the right of action accrued with the execution and delivery of the deed and that nominal damages at least should be awarded. *Hasselbusch* v. *Mohmking* (1909), — N. J. L. —, 73 Atl. 961.

A breach of an agreement or an invasion of a right does not depend, for its establishment, upon the existence of any substantial damage for there can be no wrong without injury. Rights are vindicated by the awarding of *nominal damages* in the absence of any particular items of loss . SUTHERLAND, DAMAGES, Ed. 3, p. 9 et seq., SEDGWICK, DAMAGES, Ed. 7, p. 70 et seq., *New Jersey Furniture Co.* v. *Board of Education,* 58 N. J. L. 646, 35 Atl. 397, *Clay* v. *Board,* 85 Mo. App. 237; *Stanton* v. *New York & E. R. Co.,* 59 Conn. 272, 21 Am. St. Rep. 110, 22 Atl. 300; *Phillips* v. *Crosby,* 70 N. J. L. 785, 59 Atl. 142; *Dady* v. *Condit,* 188 Ill. 234; *Webb* v. *Portland Manufacturing Co.,* 3 Sumn. 189. The right of action upon the breach of a covenant against incumbrances, if the covenant be worded in the manner customary in the United States, that the premises *are* free et cetera, accrues immediately upon the delivery of a deed to property upon which there is an incumbrance. Such a covenant is *in praesenti* and is broken as soon as made. 11 CYC. 1111, RAWLE, COVENANTS, Ed. 5, §§74, 86, *Stewart* v. *Drake,* 9 N. J. L. 139, 175. If the covenantor subsequently remove the incumbrance the right of action is not defeated. But if the incumbrance has inflicted no actual injury and the plaintiff has paid nothing toward removing or extinguishing it he may recover nominal damages only. *Stewart* v. *Drake,* supra; *Willets* v. *Burgess,* 34 Ill. 494; *Newcomb* v. *Wallace,* 112 Mass. 25; *Norton* v. *Colgrove,* 41 Mich. 544; *McGuckin* v. *Milbank,* 152 N. Y. 297, 46 N. E. 490; *Delavergne* v. *Norris,* 7 Johns. 358, 5 Am. Dec. 281.

DIVORCE—GROUNDS—EXTREME CRUELTY—MALICIOUS CHARGES. — Plaintiff and defendant in this case had separated in December, 1902, and in March, 1903, the wife, defendant, filed an affidavit with a fraternal organization to which the plaintiff belonged in which she stated that plaintiff was "a drunkard, a constant habitue of saloons, a lewd and dissolute person, unfit to be a member of any fraternal organization or to associate with decent people." This affidavit also alleged that plaintiff had not properly supported her and alleged a stated willingness on his part to live on the earnings of a certain prostitute. Extreme cruelty is a ground for divorce in California and is defined in the Civil Code, §94, as being "the wrongful infliction of grievous bodily injury or grievous mental suffering upon the other by one party to the marriage." *Held,* that plaintiff should be allowed decree on ground of ex-

treme cruelty, for the single act of the wife. *MacDonald* v. *MacDonald* (1909), — Cal. —, 102 Pac. 927.

At common law it was held that divorce will not be granted for mere mental pain "because the court has no scale of sensibilities by which it can gauge the quantum of the injury done and felt." Lord STOWELL in *Evans* v. *Evans,* 1 Hag. Con. 35, 4 Eng. Ec. 310, 311. §94 of Civ. Code abrogates this common law rule but does not expressly state that a single act shall be considered as inflicting grievous suffering. To the effect that a single act is not sufficient ground for divorce:—*Hoshall* v. *Hoshall,* 51 Md. 72, 34 Am. Rep. 298; *Doyle* v. *Doyle,* 26 Mo. 545; *Richards v. Richards,* 37 Pa. St. (1 Wright) 225; *Lloyd* v. *Lloyd,* 2 Woodw. Dec. 481. These decisions are based in part on the ground that the marriage relation is too sacred to be lightly disturbed, and a single act is not such a disturbance as will warrant the conclusion that the parties cannot live together in the matrimonial relation. False charges of conjugal misconduct are a cause for divorce. *Pinkard* v. *Pinkard,* 14 Tex. 356, 65 Am. Dec. 129; *Bahn* v. *Bahn,* 62 Tex. 518, 50 Am. Rep. 539; *Straus* v. *Straus,* 67 Hun 491, 22 N. Y. Supp. 567; *Wagner* v. *Wagner,* 36 Minn. 239, 30 N. W. 766. The main case seems to reach the limit of the court's discretion in granting a divorce for extreme cruelty.

DOWER—RIGHT TO DOWER—DIVORCE—INTERLOCUTORY DECREE.—Plaintiff and Robt. Bryon were married, and he died intestate Feb. 20, 1908, having obtained an interlocutory decree of divorce made and entered against the plaintiff Dec. 26, 1907, upon which a final judgment was entered April 8, 1908. New York Code of Civ. Pro. §763, provides that if either party to an action dies after an interlocutory judgment but before final judgment is entered, the court will enter final judgment in the names of the original parties, unless the judgment has been set aside. Real Property Law (Laws 1896, p. 584, c. 547) § 176 provides that in case of a divorce dissolving the marriage for the misconduct of the wife she shall not be endowed. Code Civ. Pro. §1774, provides that no final judgment divorcing the parties and dissolving the marriage shall be entered until after three months from the filing of the decision of the court, but on and after the entry of the interlocutory decree the payment of alimony, if allowed, shall cease and the person against whom the judgment is rendered shall have no lien upon the property of the party succeeding in the action. In this action by the widow for dower, *Held,* that the decree granted to the husband before his death did not bar the wife of dower in real estate of which he died seized. *Bryon* v. *Bryon et al.* (1909), 119 N. Y. Supp. 41.

The death of either party to divorce proceedings abates the proceedings and this effect must extend to whatever is identified with those proceedings. *Johns* v. *Johns,* 60 N. Y. Supp. 865; *Kellogg* v. *Stoddard,* 84 N. Y. Supp. 1015; *Millady* v. *Stein,* 44 N. Y. Supp. 408. §763, N. Y. Code Civ. Pro. applies exclusively to cases where the cause of action survives. *Robinson* v. *Govers,* 138 N. Y. 425, 34 N. E. 209. An interlocutory decree does not dissolve the marriage. It is simply a step thereto. BISHOP, MARRIAGE, DIVORCE & SEPARATION. §1516, p. 578. *Noble* v. *Noble,* L. R. 1 P. & D. 691; *Halfen*